ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512
Juneau, Alaska 99811-5512

MICHAEL A. ISRAELSON, Employee, Claimant, v. ALASKA MARINE TRUCKING, LLC, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201018445 AWCB Decision No. 15-0101 Filed with AWCB Juneau, Alaska On August 20, 2015

Michael Israelson's (Employee) May 22, 2014 and February 2, 2015 claims for temporary total disability (TTD) benefits, medical and related transportation costs, penalty, interest, and attorney fees and costs were heard on June 23, 2015, in Juneau, Alaska, a date selected on March 26, 2015. Attorneys Thomas Slagle and Daniel Bruce appeared and represented Employee. Attorney Aaron Sandone appeared and represented Alaska Marine Trucking, LLC, and its insurer (Employer). In-person witnesses included Employee, his spouse Maylee Israelson, and his father David Israelson. Karl Goler, M.D. testified telephonically. The record was left open to receive John Bursell, M.D.'s deposition, Employee's supplemental attorney's fees and costs affidavit and Employer's objection to the supplemental affidavit. The record closed on July 28, 2015, after further deliberation.

ISSUES

Employee contends he is entitled to additional low back medical benefits and related transportation costs. He seeks an order awarding additional past and ongoing medical care and related transportation expenses.

Employer contends because Employee's need for low back medical treatment is not work-related, Employee is not entitled to further benefits. It also contends Employee's surgery was not reasonable or necessary for Employee's recovery.

1) Is Employee entitled to additional low back medical benefits and related transportation costs?

Employee contends he is entitled to additional TTD resulting from treatment for his low back. He seeks an order awarding additional TTD.

Employer contends because Employee's disability is not work-related, Employee is not entitled to further benefits.

2) Is Employee entitled to additional TTD?

Employee contends he is entitled to interest. He seeks an order requiring Employer to pay interest on all benefits awarded.

Employer contends Employee is not entitled to any additional benefit, and is thus not entitled to interest.

3) Is Employee entitled to interest?

Employee contends he is entitled to an unspecified penalty. He seeks an order requiring Employer to pay him a penalty.

Employer contends it controverted or paid all benefits due and thus Employee is not entitled to a penalty award.

4) Is Employee entitled to a penalty award?

Employee also contends his attorney provided valuable legal services in a complex case. Employee contends he is entitled to actual attorney's fees under AS 23.30.145(b).

Employer contends Employee is not entitled to any additional benefit, and is thus not entitled to interest or attorney's fees and costs. It also contends Employee's attorney fee affidavit was untimely filed and consequently only statutory minimum fees may be awarded.

5) Is Employee entitled to an attorney's fees and costs award?

FINDINGS OF FACT

The record establishes the following relevant facts and factual conclusions by a preponderance of the evidence:

1) On May 14, 2008, Employee injured his low back while working for Employer. Employee was pulling pallets to the back of a truck so a forklift could unload them when he felt his back shift. (Report of Injury, May 22, 2008; Employee Deposition, October 16, 2014).

2) On May 22, 2008, Mark Tuccillo, D.O., at Petersburg Medical Center Clinic, treated Employee for low back pain and diagnosed acute onset of low back pain, mechanical versus discogenic. (Chart Note, Dr. Tuccillo, May 22, 2008).

3) On May 22, 2008, a lumbosacral spine x-ray was normal and showed, "Posture of the lumbar spine normally maintained. Disc heights normal. No compression fracture. Sacrum and sacroiliac joints intact. There is a left pelvic phlebolith. No spondylolysis or spondylolisthesis." (Radiologist Report, Lee Michels, M.D., May 22, 2008).

4) On September 3, 2008, Douglas Long, M.D., at Petersburg Medical Center, treated Employee in follow up, reported Employee, "presents with a problem of lumbar pain with occasion radicular symptoms down the left lower extremity and numbness in his right foot," and recommended a lumbar spine magnetic resonance imaging (MRI). (Chart Note, Dr. Long, September 3, 2008).

5) On September 19, 2008, a lumbar spine MRI showed minor disc bulging but nothing severe enough to cause his low back and radicular symptoms. Employee did not have any lumbar disk disease or any foraminal narrowing. (Radiologist Report, William Richey, M.D., September 19,

2008; Chart Note, Dr. Long, November 13, 2008, Letter from Dr. Long to Gordon Bozarth, M.D., November 13, 2008).

6) On January 14, 2009, Dr. Long treated Employee for follow-up on his lumbar pain and stated, "His lumbar strain is mostly resolved and he should be able to return to work when they have work for him." Dr. Long released Employee to full duty work. (Chart Note, Dr. Long, January 14, 2009).

7) On October 22, 2009, Paul Copps, D.O., at Petersburg Medical Center, treated Employee for low back pain, diagnosed lumbar strain, and recommended Employee treat conservatively with pain medication. (Chart Note, Dr. Copps, October 22, 2009).

8) On January 13, 2010, John Kasukonis, D.O., at Petersburg Medical Center, treated Employee for low back pain, diagnosed exacerbation of chronic low back pain, and recommended pain medication. (Chart Note, Dr. Kasukonis, January 13, 2010).

9) On January 29, 2010, Alice Hulebak, M.D., at Petersburg Medical Center, treated Employee for low back pain, diagnosed acute exacerbation of chronic lower back pain, and recommended physical therapy. (Chart Note, Dr. Hulebak, January 29, 2010).

10) On February 5, 2010, Employee began physical therapy. (Chart Note, PT Leslie Schwartz, February 5, 2010).

11) On March 14, 2010, Employee completed his physical therapy. (Chart Note, PT Leslie Schwartz, March 14, 2010).

12) On August 14, 2010, Michael Phillips, M.D., at Petersburg Medical Center treated Employee for low back pain, diagnosed left lower back pain secondary to lumbosacral strain with a subjective left lower extremity radiculopathy, and recommended pain medication. (Chart Note, Dr. Phillips, August 14, 2010).

13) On December 6, 2010, Employee injured his low back moving a pallet of freight while working for Employer. Employee was pulling the pallet really hard to move it when he felt his low back pop and felt intense pain radiating through his back and left leg. (Report of Injury, December 20, 2010; Employee Deposition, October 16, 2014).

14) On January 6, 2011, John Bursell, M.D., at Juneau Bone & Joint Center, treated Employee for low back pain, diagnosed low back pain with likely lumbar disc herniation with left lumbosacral nerve root impingement, and recommended oral steroids and a lumbar spine MRI. (Chart Note, Dr. Bursell, January 6, 2011).

15) On January 7, 2011, a lumber spine MRI showed a disc protrusion to the right of L5-S1 along with an annular tear at that level. It also showed disc bulging and degenerative changes at L4-5. (Radiologist Report, Jay Kaiser, M.D., January 7, 2011; Chart Note, Dr. Bursell, January 11, 2011).

16) On January 25, 2011, Dr. Bursell recommended Employee continue to treat his low back pain and left sciatica with physical therapy. (Chart Note, Dr. Bursell, January 25, 2011).

17) On February 8, 2011, Dr. Bursell restricted Employee from returning to work. (Patient Duty Status Report, Dr. Bursell, February 8, 2011).

18) On March 1, 2011, Dr. Bursell released Employee to full duty work. (Chart Note, Dr. Bursell, March 1, 2011).

19) On June 10, 2011, Dr. Bursell treated Employee for low back pain, stated Employee's low back and radiating left leg pain symptoms, "are worrisome for nerve root compression syndrome," and recommended an updated MRI. (Chart Note, Dr. Bursell, June 10, 2011).

20) On June 24, 2011, a lumbar spine MRI showed Employee's lumbar spine was unchanged from his January 7, 2011 lumbar spine MRI. (Radiologist Report, Damon Sacco, M.D., June 24, 2011).

21) On December 16, 2011, Dr. Bursell restricted Employee from returning to work. (Chart Note, Dr. Bursell, December 16, 2011).

22) On December 23, 2011, Dr. Bursell again released Employee to full duty work without restrictions, although Dr. Bursell stated Employee needs to be careful with his back to prevent re-injury. (Chart Note, Dr. Bursell, December 23, 2011).

23) On September 25, 2012, Dr. Bursell treated Employee for low back pain and left sciatica, and recommended physical therapy. (Chart Note, Dr. Bursell, September 25, 2012).

24) On October 13, 2012, orthopedic surgeon Douglas Bald, M.D., examined Employee for an employer's medical evaluation (EME). Dr. Bald diagnosed: (1) lower lumbar degenerative disc disease L4-5 and L5-S1 – preexisting with secondary central disc protrusion L4-5 and right paracentral disc protrusion L5-S1, (2) lumbar strain with symptomatic aggravation of preexisting degenerative disc disease – date of injury December 6, 2010, and 3) moderately severe discogenic lower back pain with intermittent right and left lower extremity radiculitis secondary to diagnoses #1 and #2. He opined while Employee's May 2008 work injury is a substantial factor in his low back condition, Employee's December 6, 2010 injury was and continues to be

the substantial cause of his low back condition and need for low back medical treatment. He also opined Employee was not yet medically stable. (EME Report, Dr. Bald, October 13, 2012).

25) On December 4, 2012, Dr. Bursell treated Employee for low back pain and restricted Employee from working while participating in physical therapy. (Chart Note, Dr. Bursell, December 4, 2012).

26) On January 16, 2013, Dr. Bursell referred Employee to Gordon Bozarth, M.D., with Juneau Bone & Joint, for a surgical spine consultation. (Chart Note, Dr. Bursell, January 16, 2013).

27) On January 28, 2013, Dr. Bozarth evaluated Employee and opined at that point he was not a good surgical candidate. (Chart Note, Dr. Bozarth, January 28, 2013).

28) On June 17, 2013, a lumbar discogram with radiologic interpretations L2-3 thru L5-S1 was positive for the L4-5 and L5-S1 disc. (Operative Report, Marco Wen, M.D., June 17, 2013; Chart Note, Dr. Bursell, June 24, 2013).

29) On August 8, 2013, Dr. Bursell treated Employee for low back pain and lumbar radiculopathy, opined Employee was medically stable with regards to his low back injury with subsequent low back pain with sciatica, and assessed eight percent whole person permanent partial impairment (PPI). (Chart Note, Dr. Bursell, August 8, 2013).

30) On September 17, 2013, Dr. Bursell treated Employee for low back pain and stated Employee's, "low back pain symptoms continue to be increased. He has no significant radicular symptoms." (Chart Note, Dr. Bursell, September 17, 2013).

31) On November 19, 2013, Dr. Bald examined Employee for an EME. Dr. Bald again opined although Employee's prior injuries, preexisting degenerative disc disease, and disc protrusions at the L4-5 and L5-S1 levels are contributing factors, Employee's December 6, 2010 injury was and continues to be the substantial cause of his low back condition and need for low back medical treatment. He stated Employee has had lower back pain associated with minor activities since his 2010 work injury but opined these, "represent in a sense a waxing and waning of symptoms associated with the original work injury of December 2010." He opined Employee was medically stable as of Dr. Bursell's August 8, 2013 PPI assessment and recommended no further treatment other than prescription medication, walking and home back exercises. (EME Report, Dr. Bald, November 19, 2013).

32) On December 30, 2013, Dr. Bursell treated Employee for low back pain and referred him for a surgical consultation. (Chart Note, Dr. Bursell, December 30, 2013).

33) On February 13, 2014, neurosurgeon Brian Miller, D.O, evaluated Employee for a surgical consultation and recommended an L4-L5 bilateral laminotomy and foraminotomies. (Chart Note, Dr. Miller, February 13, 2014).

34) On March 31, 2014, neurosurgeon Karl Goler, M.D., examined Employee for an EME. Dr. Goler diagnosed: (1) lumbar degenerative disk disease, predominately at L4-5 and L5-S1, unrelated to any work activities, (2) multiple episodes of back pain in the 1990s, the early 2000s, 2008, 2010, 2011, three times in 2012, and two times in 2013, also unrelated to work activities, and 3) increase of back pain during work hours in 2010 and perhaps 2008, on both occasions unrelated to work activities. He opined the substantial cause of Employee's need for low back medical treatment is the progression of his non-work related underlying degenerative disk disease. Dr. Goler also opined Employee was a poor candidate for any further surgery. (EME Report, Dr. Goler, March 31, 2014).

35) Employer paid Employee benefits, including time loss and medicals, until April 10, 2014, when it controverted further lumbar spine medical treatment based on Dr. Goler's report. (Controversion Notice, April 10, 2014).

36) On July 1, 2014, Employer controverted all benefits based on Dr. Goler's report. (Controversion Notice, July 1, 2014).

37) On October 16, 2014, Employee at deposition stated his low back pain slowly went away after his 2008 work injury but came back after his December 2010 work injury. Other than a 1997 incident of back pain for which Employee did not need any medical treatment, Employee had no back problems prior to his 2008 injury. Employee stopped working because of worsening back pain. The last day Employee worked was December 6, 2012. (Employee Deposition, October 16, 2014).

38) On December 17, 2014, Employee saw neurosurgeon Bruce McCormack, M.D., for a second independent medical evaluation (SIME). Dr. McCormack diagnosed symptomatic lumbar disc disease with unverified left leg radicular symptoms. He opined the substantial cause of Employee's disability and need for low back medical treatment is his underlying disc disease. He opined Employee's December 2010 work injury was a temporary aggravation of this preexisting condition, which resolved within four months. He also opined Employee was not a surgical candidate, stating surgery would make Employee worse. (SIME Report, Dr. McCormack, December 17, 2014).

39) On February 5, 2015, Employee filed a claim for TTD, permanent total disability (PTD), additional PPI, medical and related transportation costs, penalty, interest, unfair or frivolous controversion, and attorney's fees and costs. (Workers' Compensation Claim, February 5, 2015).

40) At a March 26, 2015 prehearing conference, the parties agreed to schedule a June 23, 2015 hearing on Employee's claims. (Prehearing Conference Summary, March 26, 2015).

41) On May 4, 2015, Dr. McCormack was deposed and opined surgery would not help Employee at all because Employee has mostly axial back pain and his stenosis, "is not terrible." He opined Employee's December 2010 injury was not a substantial factor in his low back condition. He stated Employee's discogenic low back pain was initially triggered by his 2008 injury but that Employee recovered from this incident enough to return to work, although he never was pain free. He stated Employee's 2008 work injury was the substantial cause of Employee's back pain "at that time" and continues to be a substantial factor, but Employee had recovered and was medically stable from the 2008 work injury within a year of it. (Deposition of Dr. McCormack, May 4, 2015).

42) On May 14, 2015, neurosurgeon Kim Wright, M.D., evaluated Employee for a surgical consultation and recommended an exploration and decompression on the left at L4-5. (Chart Note, Dr. Wright, May 14, 2015).

43) At a May 21, 2015 prehearing conference, the parties agreed to narrow the hearing issues to TTD, medical and related transportation costs, penalty, interest, unfair or frivolous controversion, and attorney's fees and costs related to Employee's low back. (Prehearing Conference Summary, May 21, 2015).

44) On June 4, 2015, Dr. Wright performed decompression surgery on Employee. (Operative Report, Dr. Wright, June 4, 2015).

45) On June 11, 2015, Dr. Wright at deposition opined Employee's sciatica was due to a pinched nerve and his low back pain may be due to that but also to Employee's multiple degenerative disk disease. Dr. Wright offered Employee decompression surgery to "take the pinch off" and see if it might improve his pain and quality of life. Dr. Wright did not review any of Employee's records other than those from Dr. Miller. (Deposition of Dr. Wright, June 11, 2015).

46) Dr. Wright would not have offered surgery if he did not think it would result in objectively measurable improvement. (Experience, judgment, observations).

47) On June 19, 2015, Employee filed two attorney's fee affidavits. The first itemized 105.3 hours attorney time at $325 per hour for experienced workers' compensation attorney Thomas Slagle totaling $34,225.00 plus $1,711 in local sales tax. Attorney Slagle filed a $3,652 cost itemization. The second affidavit itemized 7.8 hours attorney time at $300 per hour for inexperienced workers' compensation attorney Daniel Bruce and 7.3 hours paralegal time at $150 and $165 per hour, totaling $3,442.50 in fees. Attorney Bruce filed a cost itemization totaling $1,229.18. (Thomas Slagle Affidavit of Attorney's Fees, July 19, 2015; Daniel Bruce Affidavit of Attorney's Fees, July 19, 2015).

48) On June 22, 2015, Employer objected to Employee's fee request because it was untimely filed. It also contended Employee's fees are unreasonable and excessive. (Employer Objection to Employee's Notice of Filing Attorney Fees/Expenses, June 22, 2015).

49) On June 22, 2015, Dr. Bursell opined Employee's work with Employer was the substantial cause of his low back and radicular pain symptoms. He also opined Employee would likely be medically stable within 12 weeks of Dr. Wright's decompression surgery. (Letter from Dr. Bursell to Tom Slagle, June 22, 2015).

50) At hearing on June 23, 2015, the parties narrowed the hearing issues to TTD, medical and related transportation costs, penalty, interest, and attorney fees and costs relating to Employee's low back. (Parties' Hearing Representations, June 23, 2015).

51) At hearing on June 23, 2015, Dr. Goler opined the substantial cause of Employee's back pain is his degenerative changes and not his work with Employer. He opined an employee's job does not influence what a back does, genetics do, stating it is largely irrelevant that Employee's pain occurred at work. He stated genetic changes in Employee's back caused his low back issues. (Goler Hearing Testimony, June 23, 2015).

52) At hearing on June 23, 2015, Employee testified he never recovered from his 2008 injury, stating although he returned to work, he was always in pain. He also testified his June 4, 2015 surgery provided significant pain relief. (Employee Hearing Testimony, June 23, 2015).

53) At hearing on June 23, 2015, Employee's spouse Maylee Israelson testified after Employee's 2008 work injury, his pain never went away. (Maylee Israelson Hearing Testimony, June 23, 2015).

54) At hearing on June 23, 2015, Employee's father David Israelson testified Employee did not have any back issues prior to 2008. (David Israelson Hearing Testimony, June 23, 2015).

55) On June 26, 2015, Employee filed a response to Employer's attorney's fee objection, contending strict application of the three day filing requirement would result in manifest injustice to Employee's attorneys. He alleges awarding the statutory minimum fee would not reflect the legal effort put into the case. He also contended the reason attorney Slagle's affidavit was untimely filed was because when working on the affidavit on June 18, 2015, attorney Slagle had difficulty formatting it, so he contacted court reporter Lynda Barker. Barker provides court reporting and transcription services, but also assists attorneys with word processing services. She has provided word processing services to attorney Slagle for many years. She was not available on June 18, 2015, due to previously scheduled commitments, but helped him the next day. Employee filed affidavits of Lynda Barker and Thomas Slagle supporting this contention. (Employee's Response to Employer's Objection to Notice of Filing Attorney Fees/Expenses, June 26, 2015).

56) On June 26, 2015, Employee filed a supplemental fee affidavit itemizing an additional 35.9 hours attorney time at $325 per hour, totaling $11,667.00 in additional fees plus $583 in local sales tax. The costs for Dr. Bursell's deposition were not yet known. (Thomas Slagle Supplemental Affidavit of Attorney's Fees, July 26, 2015).

57) On June 29, 2015, Dr. Bursell in deposition opined Employee does not have what he would call degenerative disk disease, only mild disk degeneration, stating something happened to Employee's spine to cause his pain, rather than a progressive degenerative process. He opined Employee's low back and radicular leg pain symptoms are from nerve root impingement from his L4-5 disk protrusion. He further opined Employee's initial injury or injuries set him up to have recurrent problems. Dr. Bursell opined initially that of the 2008 and 2010 injuries, it was Employee's 2010 work injury, "that started him off on these cascade – this cascade of back problems that he hasn't been able to escape from." On further questioning, he stated it is most likely due to Employee's initial injury. Dr. Bursell opined Employee initially was not a surgical candidate because he did not have a large herniated disk or significant nerve root compression, but explained Employee has not responded to standard conservative care. He opined Employee did have some nerve root impingement and stated the goal of Employee's surgery was to decompress that nerve root and relieve at least the majority of his pain symptoms. Dr. Bursell estimated Employee would be medically stable about twelve weeks after his June 4, 2015 surgery. (Deposition of Dr. Wright, June 11, 2015).

58) Dr. Bursell is very credible. (Experience, judgment and inferences drawn from all the above).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> > (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at . . . reasonable cost to . . . employers . . . subject to . . . this chapter; . . . .
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> **AS 23.30.005. Alaska Workers' Compensation Board.**
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> (h) The department shall adopt rules . . . and . . . regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

A finding reasonable persons would find employment was or was not a cause of the Employee's disability and impose or deny liability is, "as are all subjective determinations, the most difficult to support." *Rogers & Babler*, 747 P.2d at 534.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .
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> **AS 23.30.120 Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute. *Id*.; (emphasis omitted). The presumption application involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). The evidence necessary to raise the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation.

For injuries occurring after the 2005 amendments to the Act, if the employee establishes the link, the presumption may be overcome at the second stage when the employer presents substantial evidence, which demonstrates a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, Alaska

Workers' Comp. App. Comm'n Dec. No. 150 at 7 (March 25, 2011). Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the board finds the employer's evidence is sufficient, in the third step the presumption of compensability drops out, the employee must prove her case by a preponderance of the evidence, and must prove in relation to other causes, employment was the substantial cause of the disability or need for medical treatment. *Runstrom* at 8. This means the employee must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, the evidence is weighed, inferences are drawn from the evidence, and credibility is considered.

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). The board has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 153 (Alaska 2007). The board has the sole discretion to determine the weight of the medical testimony and reports. When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision No. 087 at 11 (Aug. 25, 2008).

> **AS 23.30.135. Procedure before the board**. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

> **AS 23.30.145. Attorney Fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.
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> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

AS 23.30.145(b) requires an employer to pay reasonable attorney's fees when the employer delays or "otherwise resists" payment of compensation and the employee's attorney successfully prosecutes his claim. *Harnish Group, Inc.*, 160 P.3d at 150-51.

> **AS 23.30.155. Payment of compensation.**
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> (e) If any installment of compensation payable without an award is not paid within seven days after becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the Employer that owing to conditions over which the Employer had no control the installment could not be paid within the time period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
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> (p) An Employer shall pay interest on compensation that is not paid when due. . . .

AS 23.30.155 imposes a penalty on an employer who fails to pay an installment due to an employee if the employer does not controvert the employee's right to compensation within twenty-one days, or within seven days if the employer has previously made compensation payments.

> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.
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> **AS 23.30.395. Definitions.** In this chapter
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> (16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;
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> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence. . . .

An employer may rebut the continuing presumption of compensability and disability, and gain a "counter-presumption," by producing substantial evidence that the date of medical stability has been reached. *Lowe's v. Anderson*, AWCAC Decision No. 130 at 8 (March 17, 2010). Once an employer produces substantial evidence to overcome the continuing TTD presumption, "the claimant must first produce clear and convincing evidence" that he has not reached medical stability (*id.* at 9). One way an employee rebuts the counter-presumption with clear and convincing evidence is by asking his treating physician to offer an opinion on "whether or not further objectively measurable improvement is expected." *Municipality of Anchorage v. Leigh*, 823 P.2d 1241, 1246 (Alaska 1992). The 45 day provision in AS 23.30.395(27) merely signals "when that proof is necessary" (*id.*).

> **8 AAC 45.142. Interest**. (a) If compensation is not paid when due, interest must be paid at the rate established in . . . AS 09.30.070(a) for injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.
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> (b) The Employer shall pay the interest
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> (1) on late-paid time-loss compensation to the Employee. . . .
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> (2) on late-paid medical benefits to
> . . . .
>
> (B) to an insurer, trust, organization, or government agency, if the insurer, trust, organization, or government agency has paid the provider of the medical benefits; or
>
> (C) to the provider if the medical benefits have not been paid.

Interest awards recognize the time value of money, and they give "a necessary incentive" to release ... money due." *Moretz v. O'Neill Investigations*, 783 P.2d 764, 765-66 (Alaska 1989).

> **8 AAC 45.180. Costs and attorney's fees**.
> . . . .
>
> (b) A fee under AS 23.30.145(a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.
>
> (c) Except as otherwise provided in this subsection, an attorney fee may not be collected from an applicant without board approval. A request for approval of a

> fee to be paid by an applicant must be supported by an affidavit showing the extent and character of the legal services performed. . . .
>
> (d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state.
>
> > (1) A request for a fee under AS 23.30.145(b) must be verified by an affidavit itemizing the hours expended as well as the extent and character of the work performed, and, if a hearing is scheduled, must be filed at least three working days before the hearing on the claim for which the services were rendered. . . . Failure by the attorney to file the request and affidavit in accordance with this paragraph is considered a waiver of the attorney's right to recover a reasonable fee in excess of the statutory minimum fee under AS 23.30.145(a), if AS 23.30.145(a) is applicable to the claim, unless the board determines that good cause exists to excuse the failure to comply with this section.
> >
> > (2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the compensation beneficiaries from the services, and the amount of benefits involved.
>
> . . .
>
> (f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed, and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim…
>
> **8 AAC 45.195. Waiver of procedures**. A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

ANALYSIS

1) Is Employee entitled to additional low back medical benefits and related transportation costs?

This issue raises factual disputes to which the statutory presumption of compensability applies. AS 23.30.120; *Meek.* Employee satisfied the presumption analysis' first step with Dr. Bursell's records and deposition testimony and Dr. Bald's EME report. Without regard to credibility, Drs.

Bursell and Bald opined Employee's disability and need for low back medical treatment are related to his work with Employer. This is adequate evidence to raise the presumption and cause it to attach to his claim.

Viewing the evidence in isolation, and without regard to credibility, Drs. Goler and McCormack stated Employee's ongoing disability and need for low back medical treatment are unrelated to his work with Employer and were caused by non-work related factors. Their opinions provide substantial evidence to rebut the presumption, cause it to drop out, and require Employee to prove causation, by a preponderance of the evidence. *Saxton.*

Employee's treating physician Dr. Bursell opined Employee's need for low back medical treatment was caused by his employment with Employer. Dr. Bursell acknowledged the difficulty in specifying whether Employee's 2008 or 2010 work injury was the substantial cause of his pain symptoms and need for medical treatment to treat that pain, but his credible testimony clearly demonstrates the substantial cause of Employee's need for low back medical treatment was his employment with Employer. AS 23.30.122; *Smith.* Dr. Bursell explained Employee does not have what he would call degenerative disk disease, only mild disk degeneration, and stated something happened to Employee's spine to cause his pain, rather than a progressive degenerative process. He opined Employee's low back and radicular leg pain symptoms are from nerve root impingement from his L4-5 disk protrusion. He further opined Employee's initial injury or injuries set him up to have recurrent problems. EME Dr. Bald agreed Employee's employment with Employer was the substantial cause of his need for low back medical treatment, but identified Employee's 2010 work injury as the substantial cause. AS 23.30.010(a).

In contrast, Dr. Goler opined an employee's job does not influence what a back does, genetics do, stating it is largely irrelevant that Employee's pain occurred at work. He opined the substantial cause of Employee's need for low back medical treatment is the progression of his non-work related underlying degenerative disk disease. Dr. McCormack offered yet another causation opinion, stating Employee's 2008 work injury was the substantial cause of Employee's back pain "at that time" and continues to be a substantial factor but that Employee had recovered and was medically stable from the 2008 work injury within a year. Dr. Wright opined Employee's sciatica was due to

a pinched nerve, and his low back pain may be due to a pinched nerve, but also may be due to Employee's multiple degenerative disk disease. Dr. Wright did not review any of Employee's records other than those from Dr. Miller.

There is clearly disagreement among the physicians regarding the substantial cause of Employee's need for low back medical treatment. A finding reasonable persons would find employment was a cause of Employee's need for medical treatment and impose liability is a subjective determination. *Rogers & Babler*, 747 P.2d at 534. The fact-finders have sole discretion to determine weight of medical testimony and reports. When doctors' opinions disagree the fact-finders determine which has greater credibility. *Harnish Group, Inc.*, 160 P.3d at 153; *Moore v. Afognak Native Corp.*, AWCAC Decision No. 087 at 11.

Dr. Goler's opinion is based on his belief it is largely irrelevant that Employee's pain occurred at work. The record shows Employee's pain did not merely occur at work. Employee had specific work injuries to his low back caused by pulling very heavy pallets of freight while working for Employer. Dr. Goler's opinion is not credible and is given very little weight. AS 23.30.122; *Smith*. Dr. McCormack opined Employee recovered and was medically stable from the 2008 work injury within a year. The medical records show this is incorrect. Employee did not recover from his 2008 work injury. Although he returned to work, Employee continued to be in significant pain and continued to seek medical treatment for his work injury. Dr. McCormack's opinion is therefore given little weight on this issue. Dr. Wright's opinion is given little weight because he did not review any of Employee's records other than those from Dr. Miller. AS 23.30.122; *Smith*.

Dr. Bursell's opinion is most credible and is given the greatest weight on this issue. AS 23.30.122; *Smith*. The preponderance of evidence shows Employee's employment with Employer is the substantial cause of his need for low back medical treatment and related transportation expenses. Although it is a close question which of Employee's two injuries with Employer is the most substantial cause, the preponderance of the evidence shows Employee's 2008 work injury is the most substantial. Dr. Bursell's credible testimony is supported by Employee's testimony and medical records showing Employee did not have any need for low

back medical treatment prior to his 2008 work injury, Employee continued to treat his low back after his 2008 work injury, and continued to be in significant pain. AS 23.30.122; *Smith*.

Although Drs. Goler and McCormack opined Employee was not a surgical candidate, Dr. Bursell explained Employee initially was not a surgical candidate because he did not have a large herniated disk or significant nerve root compression. Dr. Bursell credibly and persuasively opined because Employee had some nerve root impingement and was not responding to standard conservative care, surgery was later recommended to help decompress that nerve root and relieve his pain symptoms. Dr. Bursell's opinion is supported by Employee's testimony -- the surgery provided significant pain relief. Employee's June 4, 2015 surgery was reasonable and necessary for recovery. AS 23.30.095.

Employee's claim for additional medical benefits and related transportation costs, including his June 4, 2015 decompression surgery, will be granted.

2) Is Employee entitled to additional TTD?

Employee contends he is entitled to additional TTD from July 1, 2014, the date Employer controverted all benefits based on Dr. Goler's report, until he is medically stable. Employer contends Employee's disability is not work-related but if it was, he was medically stable as of Dr. Bursell's August 8, 2013 PPI assessment. This issue turns in part on factual questions to which the presumption of compensability applies.

In satisfying the presumption analysis' first step, and without regard to credibility, Employee testified he was disabled by his work-related injuries and could not return to his job at the time of injury. This is adequate evidence to raise the presumption and cause it to attach to his TTD claim. *Meek*. Viewing the evidence in isolation, and without regard to credibility, Drs. Goler and McCormack stated Employee's inability to return to work is due to his preexisting conditions and not his work injuries. Their opinions provide substantial evidence to rebut the presumption, cause it to drop out, and require Employee to prove he was totally temporarily disabled from the period beginning when Employer stopped paying TTD, by a preponderance of the evidence.

However, because Employer rebutted the presumption of continuing TTD by raising the counter-presumption of medical stability, Employee must first rebut the counter-presumption of medical stability with "clear and convincing evidence" showing he was not medically stable. If successful, Employee must then prove his TTD claim by a preponderance of the evidence. *Anderson: Leigh.*

A) *Was Employee unable to return to his regular work after July 1, 2014, because of his work injury*?

As discussed above, Employee's need for low back treatment arose out of and in the course of his work with Employer. AS 23.30.010(a). Once an employee is disabled, the law presumes the disability continues until the employer produces substantial evidence to the contrary. *Bailey v. Litwin Corp.,* 713 P.2d 249, 252-54 (Alaska 1986). For the reasons previously stated, the opinions of other physicians involved in this case are given significantly less weight than Dr. Bursell's opinion on the disability issue. AS 23.30.122; *Smith*.

The credible testimony and medical evidence show Employee's 2008 low back injury worsened and resulted in significant disability and need for substantial medical care. The preponderance of evidence shows Employee's progressive and disabling 2008 injury-related symptoms prevented him from working after December 2012, thus rendering him legally "disabled." AS 23.30.122; *Smith*; AS 23.30.395(16).

B) *Was Employee Medically Stable After July 1, 2014*?

Although Employee had work-related disability, AS 23.30.185 limits the duration of disability benefits to the date of medical stability. "Medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time. AS 23.30.395(28).

On August 8, 2013, Dr. Bursell treated Employee for low back pain and lumbar radiculopathy, opined Employee was medically stable with regards to his low back injury with subsequent low back pain with sciatica, and assessed eight percent whole person PPI. On November 19, 2013,

Dr. Bald opined Employee was medically stable as of Dr. Bursell's August 8, 2013 PPI assessment. However, on December 30, 2013, Dr. Bursell treated Employee for low back pain and referred him for a surgical consultation. On February 13, 2014, Dr. Miller evaluated Employee for a surgical consultation and recommended an L4-5 bilateral laminotomy and foraminotomies. On May 14, 2015, Dr. Wright evaluated Employee for a surgical consultation and recommended an exploration and decompression on the left at L4-5, which was performed on June 4, 2015. Dr. Wright offered Employee decompression surgery to see if taking the compression off the nerve might improve his pain and quality of life. Drs. Miller and Wright's surgery recommendations are adequate to rebut the counter-presumption of medical stability and are clear and convincing evidence that objectively measurable improvement from the effects of Employee's compensable injury was reasonably expected to result from additional medical care and treatment. *Leigh*; *Rogers & Babler*.

The preponderance of evidence shows Employee was unable to return to his regular work after December 2012 and the substantial cause of his inability to work was his 2008 work injury. The preponderance of the evidence also shows although Employee may have been medically stable prior to February 13, 2014, Employee was no longer medically stable after that date. Employee had surgery on June 4, 2015, and is still not medially stable. AS 23.30.395(28).

Employee is entitled to TTD from July 1, 2014, the date Employer controverted all benefits based on Dr. Goler's report, until he is medically stable. AS 23.30.185.

3) Is Employee entitled to interest?

Employee also requested interest on all benefits awarded. AS 23.30.155(p). Interest is required as an incentive for prompt payment. *Moretz*. Employer must pay interest to Employee on benefits awarded to him in this decision. 8 AAC 45.142(b)(1). Similarly, Employer must pay Employee's medical providers interest on each medical bill from the date of service until payment. 8 AAC 45.142(b)(3)(C). Employee's interest claim will be granted.

4) Is Employee entitled to a penalty award?

Employee requests unspecified penalties. Under AS 23.30.155(e), if benefits due without an award are not controverted, or paid within seven days after they become due, Employer is required to pay a 25 percent penalty in addition to the benefits unless there is some reason to excuse the penalty. Employee acknowledges Employer paid him benefits up to July 1, 2014, when it controverted them based on Dr. Goler's report. Because Employer paid Employee all benefits due until it controverted them, Employee is not entitled to a penalty award. Employee failed to show the controversion was improper. Employee's penalty award claim will be denied.

5) Is Employee entitled to an attorney's fees and costs award?

Employee retained an attorney who was successful in prosecuting the most significant and complex claims in this case. This decision awarding additional medical and related transportation costs, additional TTD, and interest is a significant benefit to Employee.

If an injured worker's lawyer seeks actual attorney's fees, 8 AAC 45.180(d)(1), requires an affidavit itemizing attorney's services to be filed three days before the hearing. Strict compliance may be excused for good cause. 8 AAC 45.195. Employer contends Employee's fee affidavits were untimely filed and therefore only statutory minimum fees may be awarded. Employee does not dispute his attorney fee affidavits were untimely filed but contends good cause exists to excuse compliance. He also contends manifest injustice would result from strict application of 8 AAC 45.180(d)(1). 8 AAC 45.195.

Slagle is a very experienced worker's compensation lawyer and is aware of the affidavit filing deadlines. Court reporter Barker has provided word processing services to Slagle for many years. Slagle contacted Barker for formatting help the day the affidavit was due. There is no evidence he attempted to contact anyone else to help him format his fee affidavit and no evidence he sought an extension of the filing deadline or otherwise attempted to file a timely fee affidavit. Instead, he simply disregarded the deadline and filed the affidavit late, because the person who usually assists him with word processing and formatting was not available the day the affidavit was due. This does not provide good cause to excuse the late filing. No reason is given for attorney Daniel Bruce's late filing and Slagle's and Barker's affidavits do not demonstrate good cause to excuse the late filing of Bruce's fee affidavit.

Employee requests waiver under 8 AAC 45.195. Regulatory requirements may be waived or modified in some circumstances under 8 AAC 45.195 to prevent "manifest injustice." However, a waiver may not be employed merely to excuse a party from failing to comply with legal requirements or to permit a party to disregard such requirements. Some decisions have used 8 AAC 45.195 to modify or waive the attorney fee affidavit deadline (see *Bermel v. Banner Health Systems*, AWCB Decision No 08-0239 (December 5, 2008) (finding manifest injustice would result to the employee if the employee's attorney were limited to statutory minimum attorney's fees)), while other decisions have declined to do so (see *Strong v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-0100 (June 4, 2012) (reconsidering *Strong v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-0004 (January 6, 2012) and awarding statutory minimum fees); *Douglas v. Hill's Pet Nutrition*, AWCB Decision No. 00-0004 (January 13, 2000) (finding employee did not provide good cause for late filing)).

Although statutory minimum attorney fees may be significantly less than actual fees, Employee provided no evidence awarding statutory minimum fees in this case would be manifestly unjust. Employee's statement, "statutory fees would be small and not reflective of the intensive legal effort required in this case," is conclusory and not supported by documentary or testimony evidence. The only evidence Employee provided in support of this contention was his fee affidavits, and the Slagle and Barker affidavits explaining why the fee affidavits were untimely filed. Employee is awarded significant disability and medical benefits in this decision. Employee still has claims for PTD and additional PPI that are pending because they are not yet ripe for adjudication.

Employee has not shown statutory minimum fees on past and future benefits would not fairly compensate Employee's attorney for the work he did on this case to obtain benefits and has not provided good cause to excuse his attorney's late filing. Employee has consequently not shown manifest injustice would result from strictly applying 8 AAC 45.180. Absent such evidence, good cause, or manifest injustice, this decision declines to employ 8 AAC 45.195 to waive or modify 8 AAC 45.180's timely filing requirements.

Employee's request for attorney's fees and costs will be granted. Employee is entitled to an attorney's fees award under AS 23.30.145(a) but not under AS 23.30.145(b). Employee's costs, which include paralegal fees and local sales tax, total $8,277.68. There is no specific deadline for filing cost affidavits. Employer did not object to Employee's requested costs and Employee's request for them will be granted. Employee is entitled to $8,277.68 in costs.

CONCLUSIONS OF LAW

1) Employee is entitled to additional medical and related transportation cost benefits relating to his low back.
2) Employee is entitled to additional TTD.
3) Employee is entitled to interest.
4) Employee is not entitled to a penalty award.
5) Employee is entitled to an attorney's fees and costs award.

ORDER

1) Employee's claim for additional medical and related transportation cost benefits relating to his low back is granted.
2) Employee's claim for additional TTD is granted.
3) Employee's claim for interest is granted.
4) Employee's claim for a penalty award is denied.
5) Employee's claim for an attorney's fees and costs award is granted. Employee is entitled to a statutory minimum attorney's fees award under AS 23.30.145(a) but not under AS 23.30.145(b). Employee is entitled to $8,277.68 in costs.

Dated in Juneau, Alaska on August 20, 2015.

ALASKA WORKERS' COMPENSATION BOARD

_____

Marie Marx, Designated Chair

_____

Bradley S. Austin, Member

_____

Charles M. Collins, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Michael A. Israelson, employee / claimant; v. Alaska Marine Trucking, LLC, employer; Ace American Insurance Company, insurer / defendants; Case No. 201018445; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on August 20, 2015.

_____

Pamela Murray, Office Assistant